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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,908	09/01/2005	Peter Wollwage	4358-15	6597

23117 7590 09/16/2009

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EXAMINER	
SUTTON, DARRYL C	

ART UNIT	PAPER NUMBER
1612	

MAIL DATE	DELIVERY MODE
09/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/518,908	WOLLWAGE, PETER	
	Examiner	Art Unit	
	DARRYL C. SUTTON	1612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *26 May 2009*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *18-37*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612

/Darryl C Sutton/
Examiner, Art Unit 1612

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the efficacies of the compositions of Pollack et al. and Yoshida et al. against Candida albicans are based on completely different active compounds, therefore absolutely no basis would have existed for combining elements of these wholly distinct compositions. The Examiner disagrees. Generally, it is prima facie obvious to select a known material for incorporation into a composition, based on its recognized suitability for its intended use. See MPEP 2144.07. Pollack et al. and Yoshida et al. are both inventions in the denture cleaning art, and specifically for the treatment of Candida albicans on dentures. Accordingly, since sodium chloride is used as an adjuvant and, obviously, as a chlorine source in the compositions of Yoshida et al., it would have been obvious to modify the composition of Pollack et al. to include it as a chlorine source whether one of skill in the art was aware of its exact physiological function in the treatment; particularly since Pollack et al. teaches that the composition can be comprised of chloride ions. Applicant argues that the present invention results from the surprising discovery that chlorine is capable of rendering harmless Candida, that in situ generation of chlorine during dissolution is particularly effective and, further that in an acid environment it is possible to kill Candida within minutes. The Examiner disagrees. The Examples provided by Applicant do not show the alleged surprising results because the Experimental design is for a composition which comprises sodium chloride and does not provide any data on the role of chlorine in killing Candida albicans. Further, Applicants have not compared the data to the closest prior art, i.e. Pollack et al. Since, as cited by the Examiner in the Final rejection, Pollack et al. teaches substantially the same composition as the instant invention, i.e. a denture tablet comprising sodium bicarbonate, sodium lauryl sulfate, potassium monopersulfate, citric acid, and also teaches the incorporation of chloride ions, comparing the instant invention to that of Pollack et al. would have been sufficient to show the alleged surprising results, see page 3, Final office action. After analyzing, even assuming arguendo that unexpected results have been shown, the claims would not be commensurate in scope with those showings. Applicant has only used 10% by weight of sodium chloride, not any chloride compound in the form of an alkali or alkaline earth metal and not in any amount; has only used 5% by weight of potassium hydrogen monopersulfate, not any oxidizing agent and not in any amount; has used 30% by weight of citric acid, not any acid, not tartaric acid, and not in any amount that will result in a ph of less than 6, or less than 5.5 or less than 5; has not specified a binder used in an amount of 20% by weight, not a copolymer of ethylene and propylene oxide, polyvinylpyrrolidon or a copolymer of polyvinylpyrrolidone and vinyl acetate and not in any amount; has not used a flavoring agent; has only used 15% by weight of sodium lauryl sulfate, not any surface-active substance or substance mixture and not in any amount; has used 20% by weight of sodium bicarbonate, not any adjuvant and not in any amount; has not provided the pH of the solution; has only contacted through dipping, not all modes of contacting the object with the solution; has tested for 5 minutes, not at all times; has only used a toothbrush, not all dental objects.